

COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

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September 14, 2010

Mr. Laurence D. Wilson, Director Chronic Care Policy Group Center for Medicare Management Centers for Medicare & Medicaid Services Department of Health and Human Services, Attention: CMS-1510-P Mail Stop C4-26-05 7500 Security Boulevard Baltimore, MD 21244-1850

RE: CMS-1510- P

Proposed Rules Medicare Program; Home Health PPS Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices

Dear Mr. Wilson:

I am writing to you on behalf of Colorado's single state Medicaid agency, the Department of Health Care Policy and Financing to provide comment related to proposed rule CMS-1510-P Home Health PPS Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices under Section 6407 of the Patient Protection and Affordable Care Act.

Colorado recognizes that the proposed regulations are specific to Medicare but since Medicaid Home Health agencies must meet Medicare certification Conditions of Participation (COP), it is important to note concerns for the Medicaid program in how Medicare-specific benefit requirements are applied. It is particularly problematic when the Medicare benefit standards are translated into Conditions of Participation that may be in direct conflict with benefit standards of a State's approved Medicaid State Plan Amendment for home health. In order, Colorado has these specific comments on the proposed regulations:

§ 409.44 Skilled services requirements. Throughout this section there is language referencing improvement in function. Under a State's approved Medicaid State Plan Amendment, therapies may be authorized as appropriate to maintain function or to slow the rate of decline in function. Colorado requests that CMS consider whether the proposed rule language should be revised to clarify that potential difference in benefit or if revised instructions regarding Conditions of Participation applicability is sufficient. In either event, should CMS contemplate using the Medicare rules as the foundation for Medicaid Home Health program rules, changes are needed to accommodate the permitted differences in benefits.

§ 424.22 Requirements for home health services. §424.22(a)(1)(v) requires a face-to-face patient encounter, related to the primary reason the patient requires home health services, no more than thirty days prior to the start of care or within two weeks after the start of care. Colorado requests that the language be revised to clarify whether the face-to-face encounter requirement is limited to the initial 60-day episode of care or, in the event of multiple, consecutive episodes, whether a face-to-face encounter is required for each 60-day episode. Under a State's approved Medicaid State Plan Amendment, home health for persons with chronic conditions may be prior authorized as appropriate for up to one year. Currently certification is required for the initial and every subsequent 60-day episode during the prior authorization period. If there must be a face-to-face encounter associated with re-certifications after the initial 60-day period, such encounters will result in increased utilization and expenditures to State Medicaid Programs for physician services for dual eligible clients. If a face-toface encounter is required for each 60-day episode of care, Colorado further requests that CMS consider the implications of applying this standard in agency surveys and determine whether the proposed rule language should be revised or if revised instructions regarding Conditions of Participation applicability is sufficient. Finally, should CMS contemplate using the Medicare rules as the foundation for Medicaid Home Health program rules, the differences in home health benefits that are permitted under approved Medicaid State Plan Amendments for persons with chronic conditions must be considered and accommodated to avoid driving significant utilization and expenditure increases in State Medicaid Programs.

Thank you for the opportunity to provide comment and ask for clarification. Should you have any questions, I can be reached at <u>Barbara.prehmus@state.co.us</u> or via telephone at (303) 866-2991.

Sincerely,

Barbara B. Prehmus, M.P.H. Federal Policy & Rules Officer

Cc: Ms. Joan Henneberry, Executive Director

Ms. Lorez Meinhold, Director of Health Reform Implementation & Senior Health Policy Analyst, Colorado Governor Bill Ritter, Jr.

Mr. Howard Roitman, Colorado Department of Public Health and Environment

Ms. Cynthia Mann, Center for Medicaid, CHIP, Survey & Certification

Ms. Linda Peltz, Division of Coverage and Integration, Disabled and Elderly Health Programs Group